

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY**, on April 15, 2005 at 10:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Mike Cooney, Chairman (D)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. John Brueggeman (R)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Steven Gallus (D)
Sen. Ken (Kim) Hansen (D)
Sen. Bob Hawks (D)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Lane L. Larson (D)
Sen. Greg Lind (D)
Sen. Don Ryan (D)
Sen. Trudi Schmidt (D)
Sen. Corey Stapleton (R)
Sen. Jon Tester (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 526, 4/14/2005
Executive Action: SB 526; SB 60; SB 482; SB 249; SB
761; HB 438; HB 740; HB 713; HB 28

HEARING ON SB 526**Opening Statement by Sponsor:**

SEN. JOHN COBB (R), SD 9, Augusta, opened the hearing on **SB 526**, Revise expenditure limit to exclude ballot issue dedications and provider taxes. **SEN. COBB** explained SB 526 is an act revising definitions applicable to the state expenditure limit; excluding money dedicated to a specific purpose by means of a ballot issue and utilization fees or taxes imposed on health care facilities. Examples were I-149 and the bed tax. He presented a handout of the committee of selected appropriations in HB 2 and HB 749.

EXHIBIT (fcs81a01)

The total amount that would be excluded would be \$85,622,292. On page 1, lines 24-30 was a list of what was already excluded. The nursing home and hospital taxes were put on with the consent of the facilities in order to gain matching federal dollars. It is legal, and Montana is not going to put up the general fund to make up the difference in the cost shifting that is going on. When the voters vote to increase expenditures, he did not think those expenditures should be counted as part of the cap. Money appropriated for tax relief does not count against the cap. Voters can vote to decrease expenditures, and a ballot issue granting tax refunds would not count against the cap as an expenditure. Voters did not vote to break state government because the voters voted for a tax.

Proponents' Testimony:

Jim Ahrens, Montana Hospital Association, testified he was also chairman of the **Alliance for a Healthy Montana**, the group that brought I-149. He said it takes a long time to put an initiative together. They had their own lawyers, **Greg Petesch, Legislative Counsel** looked at it, and it was sent to the Attorney General and the Secretary of State. If the Alliance had known that there was a cap they could have added one sentence that would have said all the revenues coming in from I-149 would have been exempt from the cap. The initiative passed by 63 percent of the voters, and it brings in \$80 million to \$100 million. Now it is caught up in the cap issue, which they never intended. He thought the voters would be concerned if I-149 could not be implemented because of the cap. Regarding the bed tax, the hospitals decided in order to get their cost for Medicaid services, which the state was unwilling to provide, they would voluntarily tax themselves. By doing that they bring in federal dollars and try to get the hospitals up to a cost basis. The same thing happens with the nursing home tax. He said he was pleased to support the bill.

He recalled in 1980 nobody in the country was doing provider taxes, although they have always been legal under the federal system. They could never have envisioned in 1980 what they might do today to resolve a budget crisis, a hospital payment crisis, a nursing home payment crisis, and a voter initiative. He encouraged support for the bill.

Charles Briggs, Statewide Independent Developmental Disability Providers and the **Montana Association of Rehab** stood in support of the intent of this legislation.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. KEITH BALES thought the system is working well, but there is a concern that the federal government will limit or control the use of self-imposed taxes to get a match on the money. He thought there is a difference between the tax that is enacted by the Legislature and a tax that is put on the people by themselves. If the federal government reduces the amount that can be matched to below what is being taxed by the hospitals, the Legislature does not have to reduce that tax because it goes into the general fund. He inquired whether it should still be included in this bill if the Legislature increases the tax. **Mr. Ahrens** advised if everything that President Bush has proposed was enacted, this bill would meet those tests. If the federal government took away the opportunity to do this, there is no obligation on the state to refund money or continue the tax. The industry would seek to get their costs reimbursed by the Legislature as attempted in the past. **SEN. BALES** claimed the reason for the cap was to stop adding new taxes, increasing taxes, increasing government, and increasing government spending. Taking this tax out from underneath the cap will allow the Legislature to increase that tax whether or not it is in the best interest of the hospitals. Under those circumstances, he wondered if **Mr. Ahrens** would be in favor of it. **Mr. Ahrens** said if they increase the tax and all the money was put back in hospitals, he would certainly be in favor of it. If it was diverted to fund roads and bridges, they would probably be concerned. **SEN. BALES** observed the Legislature often taxes something and then diverts it. He asked **SEN. COBB** about other fees that would be similar and why he was segmenting these specific items rather than all of them that are similar. **SEN. COBB** said this fee is different than any other fee because of the match. This was first imposed on nursing homes in 1991. If the match went away, the hospitals and nursing homes would come

before the Legislature to get rid of it. Almost every hospital makes money on this deal. **SEN. BALES** agreed the hospitals were getting three dollars back for every dollar they put in. He did not think they have control over when the ability to do that goes away or that their tax will go away. He wondered if there should be an amendment. **SEN. COBB** understood the hospitals have a termination date on the bed tax bill because they do not trust the Legislature. The reason this tax came along is Montana quit paying inflation increases.

SEN. DON RYAN inquired what percentage is coming back to the hospitals. **Mr. Ahrens** indicated it all comes back to the hospitals. The bill was written in that way because in other states that money has been diverted. That is what the Bush administration is concerned about. **SEN. RYAN** asked if the federal government no longer allowed provider taxes if there would be any reason for the state to collect \$10 from the hospitals and turn around and given them \$10 back. **Mr. Ahrens** did not see any. **SEN. RYAN** told **SEN. COBB** he was glad he pointed out there is a termination date in the hospital tax. He inquired if it is **SEN. COBB'S** belief that if the people voted to increase expenditures in particular areas that the Legislature would need to exclude those because it would cause them to decrease expenditures in other areas under the cap formula. **SEN. COBB** replied ballot issues really started in the 1980s. He did not know if ballot issues would have been excluded at that time. **SEN. RYAN** wondered if the ballot issue would have passed if they had said any increase in spending for a tobacco initiative to fund human services will cause a reduction in spending in education or corrections by a corresponding amount. **SEN. COBB** thought it would have been a tougher issue, but he said he could not speak for all the voters. He thought it would have made a difference if voters were told about the cap.

SEN. RICK LAIBLE inquired if the provider tax is itemized on a patient statement. **Mr. Ahrens** stated it is not itemized on their bill. **SEN. LAIBLE** inquired if it is included in their bill. **Mr. Ahrens** said it is not included in their bill because the money is a wash. **SEN. LAIBLE** asked if the hospital is paying for this out of their accounts payable, if the patients are paying this as part of their invoice, or if the money is coming from hospitals as part of the cost of doing business. **Mr. Ahrens** said ultimately all their revenues come from patients, so in a very general way it would come from patients. They do not put five more dollars on every patient's bill. **SEN. LAIBLE** asked about the nursing home bed tax and if that appears on the patient's bill. **Mr. Ahrens** replied, it does not.

SEN. COREY STAPLETON said currently there are two coexisting types of democracy: direct democracy via initiatives and referendums and the republic form of democracy. Either one can be changed by the other, and a law passed by initiative is no greater or less than a law passed by the legislature. **SEN. COBB** agreed. **SEN. STAPLETON** said **SEN. COBB** would like them to consider giving a super power or greater power to the direct democracy form of government where appropriations from the direct democracy approach would be superior to those made by the Legislature. **SEN. COBB** disagreed. **SEN. STAPLETON** asked, if appropriations done through initiative and ballot are made superior to those made by the Legislature, whether that has more unintentional consequences than just trying to respond to a spending cap from 1981. Giving more power to people that read a paragraph and vote yes or no is an inferior model of appropriation to that which is done over 90 days by 150 Legislators. **SEN. COBB** thought the budget process they do now is inferior to what they could do. He did not want the voters forcing them to cut what the Legislature has appropriated. The Legislature could decide not to fund the voters initiative, but being politicians it is hard to tell the voters they cannot spend the money.

{Tape: 1; Side: B}

SEN. STAPLETON said he agreed with much of what **SEN. COBB** said. Issues on an initiative or referendum cannot be debated. He submitted that **SEN. COBB** is suggesting those be given precedence over appropriations made by the Legislature. **SEN. COBB** thought it was just the opposite. The voters said to the Legislature that the voters have a preference and forced the Legislature to cut existing programs without knowing it. He was trying to make it more equal. If the Legislature cuts the budget, they do it because they want to, not because an initiative forces them to cut existing programs they have funded all these years. **SEN. STAPLETON** said that is one way of dealing with it, but a law passed after the initiative has the same effect of law. They can consider factors other than just the passions of the day that pass with the initiative. His concern was this Legislature has relegated much of their power away to different entities including the Executive and the initiative and referendum process. This is one more relegation of power by the Legislature. He wondered if **SEN. COBB** was considering it in that light or if this was more of a stop gap measure against the spending cap. **SEN. COBB** said he was doing just the opposite. He did not think the voters have the right to force the Legislature to cut the rest of the state government because of an initiative. If the Legislature wants to change that initiative they have the right to do it.

SEN. BOB KEENAN said this bill is a proposal to amend 17-8-105, MCA. He thought the underlying theme of that amendment is a heightened respect to the voters will through the passage of ballot initiatives. He asked if **SEN. COBB** agreed with that.

SEN. COBB replied, no. It is just the opposite. The voters do not have the right to tell the Legislature to cut the rest of state government because of the spending cap. When the voters spent that \$60 million, it meant the Legislature had to cut \$60 million.

SEN. KEENAN asked **Mr. Ahrens** if he sees this as a heightened respect to the will of the voters or if the Legislature is thumbing their nose at the voters. **Mr. Ahrens** replied the ballot issue tried to put a tax on tobacco products and cigarette smoking to fund four major categories. They did not even get into these intellectual discussions. They were just trying to get the tax enacted to fund certain programs, and then got caught in the debate of the cap. He said they are uncomfortable being there. **SEN. KEENAN** asked if the ultimate goal is to end cigarette smoking. **Mr. Ahrens** said, that is correct. **SEN. KEENAN** expressed concern about sustainability of programs. The four programs were provider rates, CHIP, pharmacy and insurance. He asked if the expenditures of I-149 money reflect the will of the voters within the language of I-149. **Mr. Ahrens** said in general they do. He acknowledged the Legislature has the right to do what they want to do with these initiatives. **SEN. KEENAN** agreed. Two years ago he was part of and a supporter of SB 485, which changed the allocation of I-146 money. It was done up front, and they did not just ignore the will of the voters as has happened to I-149 in his opinion. They are backfilling existing programs with I-149 money. He asked **SEN. COBB** if he was the author of the information he gave to the committee. **SEN. COBB** said this was done by **Lois Steinbeck, Legislative Fiscal Division**, on his behalf, to show what would be excluded from the cap. **SEN. KEENAN** asked if the first column was SB 120 instead of HB 120. **SEN. COBB** said that is correct. **SEN. KEENAN** asked about the detail for the \$64 million. **SEN. COBB** explained that is the entire I-149 money that is projected to come in for the biennium. That includes SB 324, the prescription drugs, HB 667, the Medicaid provider rates, the Medicaid expansions, and the CHIP expansions. It includes everything that was in that initiative and everything that would be raised over the biennium. **SEN. KEENAN** asked if new proposals include the backfill of the CHIP and Medicaid expenditures. **SEN. COBB** thought CHIP had been cleaned up, but he did not know yet. The \$64 million is the entire amount for I-149; whether it is being used for backfill or not, it all counts against the cap. Part of the money goes to fund mental health services. Last session they changed I-146 for

two years to fund mental health services, which made everybody mad. On July 1, that program ends; they are backfilling something that ends on July 1. The whole \$64 million is everything in I-149 whether they backfill it, use it for anything, or just let it sit there. If they spend it on anything it is part of the expenditures. **SEN. KEENAN** thought they would disagree on this given the conversation so far. It was his opinion that SB 526 should be a referendum placed on the ballot by the Legislature for the people to vote on. **SEN. COBB** said they can put anything they want out to the voters anytime. The Legislature can change the initiative process and the allocations. Last session, they swiped almost all the I-146 money. He asked why ballot initiatives should affect all of the rest of state government. He did not see any bill to put off I-149 for a couple of years because of the cap problem. He did not think these things should apply against the cap.

SEN. GREG BARKUS said he was not around in 1981, and wondered what this cap really is. **SEN. COBB** recalled **SEN. DAVE LEWIS** knows more about it than anyone else, and said he is the one to talk to. **SEN. BARKUS** asked about the legislative intent in passing this cap. **SEN. COBB** said, like most bills from 23 years ago, he does not necessarily know what the legislative intent was. It is a cap, and there are already exemptions underneath the cap. Things have changed; the initiative process is being much more widely used now. The Legislature changes the initiative process and the statutes every session. **SEN. BARKUS** said if there is an initiative in the next election to prohibit state government from growing any faster than whatever calculation is in the current cap, he wondered if the Legislature could trump that decision. **SEN. COBB** replied they can always amend initiatives unless they are constitutional amendments.

SEN. BARKUS asked **SEN. LEWIS** about the cap. **SEN. LEWIS** advised he was the budget director for Governor Schwinden in 1981 when Rep. Nordvedt introduced the bill. The Governor did not want the bill on his desk in the form it was introduced because the choice of vetoing or signing the bill was very unpleasant. The Governor dispatched **SEN. LEWIS** to meet with Rep. Nordvedt to see if they could make the bill into something the Governor could live with. The principle that Rep. Nordvedt wanted to implement into a law would not let state general fund spending grow faster than the growth in personal income in the state. The Governor was not all that opposed, but he did not want to get himself locked into something. There was discussion on what the base was to be and how to calculate the growth in personal income in the state. They negotiated something that seemed fairly rational. For every year since then, the Legislature has not expended state general

fund faster than the growth of personal income. This is the first year where it became an issue.

SEN. BOB HAWKS asked if it was true that the primary trade of Rep. Nortvedt was as a physicist. **SEN. LEWIS** replied, yes.

CHAIRMAN MIKE COONEY inquired if the cap has ever been exceeded by past Legislatures. **SEN. LEWIS** replied the only time he recalled it being an issue was when HB 124 passed. This was the "big bill" by **SEN. BOB STORY**. That bill took all the local government money, ran it through the state, and gave it back. He recalled some discussion after the session that they had gone over the cap because of that. That bill passed on the last day of that session. He did not recall seeing any calculations. It did not increase the load on the taxpayers in the state, because they simply brought in local government money and reallocated it.

SEN. COBB pointed out the provider tax has no effect on taxpayers. The ballot issue was a tobacco tax they voted on themselves. He did not think that should affect all of state government.

SEN. JON TESTER said he assumed the cap is supposed to be based on personal income growth in relationship to government spending. He said either he was not paying attention or was not aware that this cap even existed until this session. He noted that **SEN. LEWIS** was chairman of House Appropriations last session. **SEN. TESTER** recalled the bill by **REP. KASTEN** that tied government growth to personal income. It passed through House Appropriations, it passed through the House, and got to the Senate Finance and Claims Committee where it died. At the time he was torn on the issue. He wondered why that bill even made it to the docket, if they had this cap all along. **SEN. LEWIS** recalled **REP. KASTEN** was frustrated by the fact that the cap in the statute was not tight enough and had never applied. He attempted to tighten it up to some extent. He speculated the support in the House was due to the fact that **REP. KASTEN** was a hard working member of House Appropriations.

Closing by Sponsor:

SEN. COBB closed on the bill.

EXECUTIVE ACTION ON SB 526

{Tape: 1; Side: B; Approx. Time Counter: 25.4}

Motion: SEN. COBB moved that SB 526 DO PASS.

Discussion:

SEN. LAIBLE asked if he could propose a conceptual amendment.

Motion: SEN. LAIBLE moved a CONCEPTUAL AMENDMENT TO ELIMINATE SECTION 1, (B) (IX), WHICH IS THE MONEY DEDICATED TO THE SPECIFIC USE OR USES BY A BALLOT ISSUE.

SEN. LAIBLE said he listened to the debate and appreciated where SEN. COBB was coming from, particularly on provider taxes. These are taxes that the industry as a whole has imposed upon themselves in order to get matching federal funds. In a sense it does not come from the taxpayers unless they use the theory that all revenue comes from the taxpayers and all revenue comes from the clients of the hospitals and nursing homes. The ballot initiative issue bothered him in the sense that this is a small group that are actually paying this tax; twenty percent of the population smokes cigarettes. The intent of the original legislation was to hold spending within the bounds of what the taxpayers of the state could afford to pay. He said he would be supportive of the bill without (ix). He could see the logic behind including the self-imposed provider fees.

SEN. HAWKS said the Legislature's role in responding to initiatives is primarily as implementers. It seemed to him that if they are there to provide order and are responsible for a reasonable form of government, that this amendment has got the tail wagging the dog.

Vote: Motion failed 6-13 by roll call vote with SEN. BALES, SEN. BRUEGGEMAN, SEN. ESP, SEN. LAIBLE, and SEN. STAPLETON voting aye. SEN. BARKUS voted aye by proxy.

{Tape: 2; Side: A}

Motion: SEN. KEENAN moved that SB052601 BE ADOPTED.

EXHIBIT(fcs81a02)

Discussion:

SEN. KEENAN explained his amendment would make a referendum out of SB 526 and put it on the ballot before qualified electors in November of 2006.

SEN. COBB said he would oppose the amendment; they already had the debate.

SEN. LAIBLE spoke in support.

SEN. KEENAN said this is self-explanatory as to whether they respect the will of the voters or not.

Vote: Motion failed 7-12 with SEN. BALES, SEN. BARKUS, SEN. KEENAN, SEN. LAIBLE, and SEN. STAPLETON voting aye. SEN. BRUEGGEMAN and SEN. ESP voted aye by proxy.

SEN. LAIBLE said he would oppose the bill, but it was obvious the bill would pass out of committee. He wanted to be the first one to make a bet on what the newspaper headlines would be--that the Legislature breaks the cap.

SEN. COBB said the newspaper can say what they want; they do not have to read it. Governor Martz broke the cap in her budget. When they came into session it was already broken; they were above the cap. The Legislature did things to get around the cap. Even if they were \$500 million over the cap, these were the only two things he was saying should not be part of the cap. They could still be over the cap and this would not necessarily get them out. The issue was whether these should be counted. It would have been better if this had not been here this session, but this is the issue.

SEN. STAPLETON said this is a disappointing bill. He said there have been a variety of occasions this session where the Senate has not been smart. It is not wise to relegate the Legislature's authority to appropriate. The Legislature has the ability to address initiatives by redoing the law. He found this to be inconsistent with a lot of the good work that **SEN. COBB** had done in the past. He favored the amendment by **SEN. LAIBLE**. He thought there would be unanimous consent on a bill that would take the hospital fee out of this, and disagreed that it is the role of the Legislature to just implement what initiatives say.

SEN. KEENAN thought the sponsor of this bill knows better than to say the Governor Martz budget exceeded the cap any more than Governor Schweitzer's budget would exceed the cap or not. He pointed out that is the beginning point in the appropriation process. The Legislature appropriates all money; that is what the Constitution says. They are thumbing their nose at the will of the voters by appropriating money outside of the intent of I-149. They talked about that when they began HB 2. They continue to do that. He did not think this bill would necessarily get out of this committee; he thought there were some smart people here.

He said he now has initiative language, rather than the referendum language that was just voted down.

SEN. HAWKS said one would hope that they are a deliberative body and the process here is deliberative. One would hope that the initiative process is a deliberative process as well. He said he does not raise the Legislature above the population in general with regard to initiatives, but he thought the initiative process needs to also take responsibility for the appropriation that they may be creating. He thought that was a fair process.

SEN. LAIBLE maintained this bill has come forward so they can exceed the cap. He asked where they were in relation to the cap and if the bill was needed if they are under the cap. **CHAIRMAN COONEY** replied the last sheet he saw from the Legislative Fiscal Division indicated they were about \$7 million over the cap. The reason that occurred was HJR 2 added additional oil and gas monies to the estimate. When they added those revenues, they also had to estimate the payments to counties. There is about \$12 million in payments to counties that applies against the cap. There was some action taken in this committee that could bring those numbers down. One evening the cap was exceeded by several million dollars because of a new number that the Legislative Fiscal Division received from the US Department of Labor recalculating personal income growth in Montana. **SEN. LAIBLE** noted if his amendment passed, they would have been \$20 million under the cap. **SEN. COONEY** said if they were to take the Evaro/Polson highway project out of HB 5, that could bump the cap up by \$90 million. **SEN. LAIBLE** wondered why they were passing this bill at the end of the process unless they are looking forward to something else they are going to do or a special session that might have an impact. **CHAIRMAN COONEY** addressed the will of the voters. In **Mr. Ahren's** testimony, when he described the initiative process, no one ever said anything about the cap, and he did not know if anybody knew there was a cap at that time. When the cap was exceeded four years ago with the "big bill", newspaper accounts indicated that perhaps it was exceeded but they just did not know about the cap at that time. He did not think the voters knew about the cap. The cap was introduced to him shortly after the election. It has been exceeded by past legislatures. He expressed disappointment that this bill does not include the "big bill" money. As **SEN. LEWIS** said, it is really pass through money. It should be in this exclusion; it is not expenditure, and yet they have to account for it under the expenditure cap. The expenditure cap, in his mind, is not particularly an honest thing that they can use as a tool to keep them under a true expenditure limit. He said he was all for a true expenditure limit, but this one has been very difficult to determine. No one has been able to define really what it is. It

has changed numerous times throughout this legislative process. He thought what **SEN. COBB** was trying to do was bring some sanity of some form to a piece of legislation that was passed years ago that no one can put form to. He indicated he may bring an amendment to the floor, if this bill passes out, to add in the "big bill" money. He characterized it as a form of honesty that the people of this state deserve. If they are going to have an expenditure cap, he suggested they talk about true expenditures. Pass-through money is not; that is why they do not count federal money in this cap. He said it was right for the bill to be in front of them. It was not an attempt to do anything except bring some form to legislation that was not particularly well thought out.

SEN. BALES agreed with the Chairman on the pass-through money. He thought the "big bill" money should be out, and the oil and gas money that goes to the counties that was once on the property tax rolls should be excluded as well. He did not agree with the bill because the reason for the cap was to make sure that the Legislature did not increase spending in any one session to the point that it would cause new taxes in the next session or sometime after that. The thought was to not grow government faster than the economy of the state is growing. When government starts to grow faster than the economy is growing, a problem is created when the basis upon which taxes are levied, which is the growth of the economy, has not increased. Even though the present law is not a panacea and hard to understand, he thought the basic concept was sound and that it was a concept they should keep firmly in mind and adhere to. There was an initiative, and the majority placed a tax on a minority. There is a danger in doing that. He contended the cap is needed because of that. Part of the reason there is a representative form of government is that the Legislature can weigh whether something is in the best interest of this state. He thought initiatives need to be in the cap, because it is part of the obligation and the duty of this Legislature to decide how much they want to tax a minority. He thought they may need to look at the spending cap concept and improve on it, but he did not think this bill was the way to do it.

SEN. KEENAN advised originally this bill was LC2235, requested by **REP. JILL COHENOUR**, at the request of the Senate President in January. **SEN. COBB** found this LC when he was investigating the cap situation. He talked to **SEN. KEENAN** about this bill and said he had some interest in it. **SEN. KEENAN** said he asked him if he was going to carry this bill, and **SEN. COBB** said no, that is the President's or the Chairman of the Senate Finance and Claims Committee's job to carry a bill such as this. After he made the motion to have the draft for a committee bill, he asked **SEN. COBB**

if he was going to carry the bill, and **SEN. COBB** told him, nobody else would. **SEN. KEENAN** noted he made a committee bill request for the drafting of a bill for the interim study of the education issue, which became SB 525. He was not given the opportunity to sponsor that bill; that bill was grabbed by the Senate President and is going through the process. Why he did not know, but he said he understood being in the minority. He understood how this process works, but he thought this committee needed to recognize the steps this bill has taken through the process and the reason that **SEN. COBB** was carrying it.

SEN. COBB said he thought if there was a committee bill that the chairman had to carry the bill. He talked to **CHAIRMAN COONEY** who said that was not correct and that **SEN. COBB** ought to carry this bill and bring it up for discussion. **CHAIRMAN COONEY** did not say whether he was for or against the bill. State government was a lot simpler twenty or thirty years ago. They used to meet over in the House Chambers in the back room, brought the directors in, and that is where they did their House Appropriations process. If they had known federal government would have grown this much, he imagined they would have looked at federal spending in this cap. When this bill gets to the floor, they could take the ballot initiative out and put the pass-through in. Eventually he thought they should take all the pass-throughs out and not count them against the cap and then tighten the cap way down to general fund and state special. There are things in existing law that are not counted against the cap. These are two more things to be added. If someone wants to change something, it can be done on the floor of the Senate. The pass-through to counties is big money.

Vote: Motion carried 12-7 by roll call vote with **SEN. BALES**, **SEN. BARKUS**, **SEN. BRUEGGEMAN**, **SEN. KEENAN**, **SEN. LAIBLE**, and **SEN. STAPLETON** voting no. **SEN. ESP** voted no by proxy.

EXECUTIVE ACTION ON HB 60

{Tape: 1; Side: B; Approx. Time Counter: 28.3}

CHAIRMAN COONEY said this was **REP. HARRIS'** bill on the meth cleanup. He noted this bill was amended in the Senate Public Health Committee and has a transmittal deadline issue. He spoke with **REP. HARRIS**, and if this bill passes, they will have to suspend the rules in the House to accept it.

Motion: **SEN. STEVE GALLUS** moved that HB 60 BE CONCURRED IN.

Discussion:

SEN. GALLUS inquired about the exact amendment that was put on in Senate Public Health Committee and its significance to the bill. If it is not a big amendment, there is a possibility of stripping that amendment if it is not necessary. **Ed Thamke, Department of Environmental Quality (DEQ)**, said they took out the immunity provision for governmental employees which was new section seven on page four, line 30. They also struck new section nine on page five.

CHAIRMAN COONEY said **REP. HARRIS** will try to move the bill in the House. It passed there by a large number.

SEN. LIABLE said he liked the bill and would like to get this out.

Vote: Motion that HB 60 BE CONCURRED IN carried 14-0 by voice vote.

EXECUTIVE ACTION ON HB 482

{Tape: 2; Side: B}

Motion/Vote: **SEN. BALES** moved that HB 482 BE CONCURRED IN. Motion carried 14-0 by voice vote.

EXECUTIVE ACTION ON HB 249

{Tape: 2; Side: B; Approx. Time Counter: 0.9}

CHAIRMAN COONEY said they previously tried to take action on the bill, but a question was raised about whether or not it needed a three-quarters majority. **Taryn Purdy, Legislative Fiscal Division**, said **Mr. Petesch** was not unclear on this as she previously stated, and this does not require a three-quarter vote.

SEN. LAIBLE stated he was absolutely opposed to this bill. It diverts money out of the permanent fund and creates the Big Sky Economic Development Trust Fund. They already passed two other economic development trust funds. He thought taking money out of that entity which helps bond ratings was a big mistake.

Vote: Motion carried 11-8 by roll call vote with **SEN. BALES**, **SEN. COBB**, **SEN. HAWKS**, **SEN. KEENAN**, and **SEN. LAIBLE**, voting no. **SEN. BARKUS**, **SEN. ESP**, and **SEN. STAPLETON** voted no by proxy.

EXECUTIVE ACTION ON HB 761

{Tape: 2; Side: B; Approx. Time Counter: 4.8}

Motion: SEN. GALLUS moved that HB 761 BE CONCURRED IN.

Discussion:

SEN. KEENAN asked about the flow of the money. Ms. Purdy stated there is an appropriation in the bill from general fund on page 4, line 1. The total impact on the ending fund balance would be \$660,000.

SEN. GALLUS said this is a big issue on the national level, and Congress has been slow to act. This bill is meant to be temporary. There is termination language in the bill that if Congress passes any legislation to fund this at the federal level that this bill will become null and void at that point.

SEN. HAWKS inquired if the federal government does not come through whether the state is prepared to cover this for the biennium. CHAIRMAN COONEY said that is an assumption they will have to make.

Vote: Motion carried 10-6 with SEN. BARKUS, SEN. HANSEN, SEN. HAWKS, and SEN. WEINBERG voting no. SEN. ESP and SEN. STAPLETON voted no by proxy.

EXECUTIVE ACTION ON HB 438

{Tape: 2; Side: B; Approx. Time Counter: 8.7}

Motion: SEN. KEENAN moved that HB 438 BE CONCURRED IN.

SEN. KEENAN said this is the Braille literacy services for blind and visually impaired children. It is not included in HB 2. It is \$245,000 the first year and \$200,000 the second year.

CHAIRMAN COONEY preferred to hang onto the bill.

SEN. KEENAN withdrew his motion.

EXECUTIVE ACTION ON HB 740

{Tape: 2; Side: B; Approx. Time Counter: 9.5}

Motion: SEN. BALES moved that HB 740 BE CONCURRED IN.

Discussion:

SEN. KEENAN said this was in HB 2 already. Ms. Purdy did not believe this was in HB 2; it transfers money from the general fund, and it has been appropriated in the bill.

SEN. TRUDY SCHMIDT said the money is transferred to the Department of Public Health and they in turn grant it to Lincoln County. Ms. Purdy said that was correct. A cleaner way of doing this was to appropriate the money directly to the Department.

SEN. BARKUS noted they have been holding these bills and waiting for status sheets and HB 2. He wondered if anything had changed as they seemed to be spending a lot of money all of a sudden.

CHAIRMAN COONEY indicated the HB 2 Free Conference Committee met briefly the previous evening, and would meet again that afternoon. Some of these bills are in HB 2, and some of them had a great deal of interest by members. He thought they could avoid having to go through blast motions, but some may end up going through that anyway.

SEN. ESP said there is an amendment in their packet which they probably cannot put on this. CHAIRMAN COONEY said they could put it on, but it would force a situation where the House would have to suspend the rules. He looked at that amendment, and did not think it was that important. He said he had no preference one way or the other.

Vote: Motion carried 16-0 by voice vote.

EXECUTIVE ACTION ON HB 713

{Tape: 2; Side: B; Approx. Time Counter: 13.3}

Motion: SEN. SCHMIDT moved that HB 713 BE CONCURRED IN.

Discussion:

SEN. SCHMIDT said this was the bill to appropriate money for a lobbyist concerning the BRAC.

SEN. CAROL WILLIAMS thought this was a good bill, but needed to be reduced in cost.

Motion: SEN. LIND moved that HB071303.ATP BE ADOPTED.

EXHIBIT(fcs81a03)

SEN. LIND explained this would change the effective date.

SEN. LAIBLE opposed the amendment. There was testimony that they already had \$350,000. He thought that would be enough to get them by, and he did not want to put the bill in jeopardy by amending it.

SEN. RYAN commented if this was the only amendment that was going to be put on the bill, he thought it would be unnecessary in light of the testimony. They have start up money, and this would be money that would be available later. If there are other amendments to be put on the bill, then this could be added at that time.

CHAIRMAN COONEY said he discussed the possibility of this bill being amended with the sponsor, who felt confident if this were to come back amended that she stood a good chance of getting the House to suspend the rules.

SEN. GALLUS asked **SEN. LIND** why the bill was unworkable without the amendment. **SEN. LIND** said he recalled testimony that fall is the time when these decisions would be made. The effective date was in July. He wanted to give them access to the money should this bill pass.

SEN. LIND withdrew his motion.

SEN. WILLIAMS wondered about reducing the amount. They had to say no to a lot of good projects, and there will be things left in their packets. She supported the bill but favored lowering the amount from \$250,000 to \$100,000.

SEN. BARKUS opposed the bill. He could not see the appropriateness of taking general fund money to hire a lobbyist.

Motion: **SEN. WILLIAMS** moved TO STRIKE "\$250,000" AND INSERT "\$100,000".

SEN. SCHMIDT noted this group is serious about making sure these installations stay in Montana. She thought it was important to fund this at some level.

SEN. DAN WEINBERG agreed with **SEN. BARKUS** about spending money for a lobbyist, when they would be turning down things that were more worthy. He hoped they had not become so jaded as to believe that a lobbyist is necessary to be heard. He would like to

believe that people with a good cause and some energy can make themselves heard without having a hired gun.

SEN. WILLIAMS thought this was an important project. Other states who are trying to keep their bases open are hiring expensive, well-paid lobbyists. She thought this was a small amount of money to give to them to do that. It is important to have them active in Washington to try to keep the jobs and the base in Great Falls.

Vote: Motion on the amendment carried 15-4 by voice vote with **SEN. ESP**, **SEN. LAIBLE**, **SEN. RYAN**, and **SEN. STAPLETON** voting no.

Motion: **SEN. LIND** moved that HB071303.ATP BE ADOPTED. (Exhibit 3)

SEN. RYAN said this amendment makes more sense with the reduced amount of money.

Vote: Motion on amendment HB071303.atp carried 17-2 by voice vote with **SEN. ESP** and **SEN. KEENAN** voting no.

Motion/Vote: **SEN. GALLUS** moved that HB 713 BE CONCURRED IN AS AMENDED. Motion carried 11-8 by roll call vote with **SEN. BALES**, **SEN. BARKUS**, **SEN. COBB**, **SEN. ESP**, **SEN. KEENAN**, **SEN. LARSON**, **SEN. STAPLETON**, and **SEN. WEINBERG** voting no.

EXECUTIVE ACTION ON HB 28

Motion: **SEN. BRUEGGEMAN** moved to RECONSIDER ACTION on HB 28.

Discussion:

SEN. BRUEGGEMAN said he serves on the Legislative Branch Computer Systems Planning Council, and is the one legislator that serves on that committee. They deal with the planning for information technology systems and functions in the Legislature. This is a bill they put together as an interim committee. He did not know how **REP. DAVID WANZENRIED** carried the bill because **SEN. BRUEGGEMAN** was supposed to carry the bill. He was not present for the hearing or executive action for this bill. He referred to his reversion bill that passed and was tabled in the House. This bill says that they can put a portion of that 30 percent of what they have left over at the end of the year into a savings account for large scale IT projects like replacing the voting boards in the House. He thought this was an important pilot project and a good first step in trying to make the budget process better and help good managers be even better managers.

CHAIRMAN COONEY asked **Ms. Purdy** to comment on the fiscal impact. **Ms. Purdy** said her notes said there was no fiscal impact in the fiscal note. It was not reverting any money that the agency would be allowed to keep under the 30 percent. **SEN. BRUEGGEMAN** added this directs what they can do with some of the reversion. They can put a portion of that reversion into an IT savings account to pay for IT projects. **Ms. Purdy** said in the 30 percent now there is a two-year limit to how long that can be spent. Under this bill, if it is in an account the money can stay in the account. **SEN. BRUEGGEMAN** followed up that the Legislature would have to give them the appropriation authority to spend money out of this account. The Legislative Branch could choose how much of their reversion they want to put into the savings account.

SEN. SCHMIDT wondered why they did not act positively on the bill. **SEN. BRUEGGEMAN** thought there was some concern on the committee about creating savings accounts and ending up with a lot of money in the savings account because there was no cap. The Legislative Branch will not have the opportunity to put much money in this account year to year. He thought it was critical to put this in place now, because there are a lot of things coming up they will have to spend money on from an IT perspective. This would reduce what they would have to deal with in a decision package.

SEN. HAWKS asked if there was a concern about setting precedents with regard to other departments.

SEN. GALLUS raised a point of order. that a motion to reconsider was a member of the committee asking permission to debate the bill. It was not a motion to debate the bill.

Vote: Motion TO RECONSIDER ACTION ON HB 28 carried 13-6 by voice vote with SEN. BALES, SEN. BARKUS, SEN. LARSON, SEN. LIND, SEN. WEINBERG, and SEN. WILLIAMS voting no.

{Tape: 3; Side: A}

SEN. BRUEGGEMAN said this would help avoid massive appropriations for IT. This is a pilot program with an agency that will be responsible with this new authority.

CHAIRMAN COONEY said this is done in another agency, but it is funded differently. The Secretary of State's office has been allowed to put some of its enterprise funds in reserve with the idea they would use those dollars in a way that would help offset some of their operating costs such as IT. The idea was the customers out on main street are changing and if those offices that are dealing directly with them were not able to deal with

the changes as well then they would not be able to provide the services. He was in office when they did that, and when he left office they had about \$1 million in that account and were looking forward to spending some of those dollars on improving the corporate computer system. He believed that Secretary Bob Brown made some headway in doing that, and now more online registration can be done. There are some similarities with what **SEN.**

BRUEGGEMAN was discussing with this particular bill.

SEN. BARKUS asked if they appropriate money out of this body and the agency does not spend it all if they keep it and squirrel it away. **SEN. BRUEGGEMAN** indicated they already have this ability. This is not changing any of that ability with respect to reversions. Current law gives the ability to request up to 30 percent of what they have left at the end of the year. This bill allows them to put some of that carry forward into a savings account for large-scale IT projects. **SEN. BARKUS** asked if they have to come to this body to ask permission to spend it. **SEN. BRUEGGEMAN** said, that is correct.

SEN. BRUEGGEMAN said the Legislature was very foresighted with the enterprise fund in the Secretary of State's office. Secretary Brown was able to reduce rates by five to seven percent to the business community because of how the Legislature let them manage their money. The more flexibility they give the Legislative Branch, the more reversions to the general fund will be increased as large-scale requests will be reduced in the future.

Vote: Motion that HB 28 BE CONCURRED IN carried 11-4 by voice vote with **SEN. BALES**, **SEN. BARKUS**, **SEN. ESP**, and **SEN. WEINBERG** voting no.

SEN. LAIBLE asked why they were holding on to the Braille bill. **CHAIRMAN COONEY** indicated it was his intention with the bills that were in the folder that there will be opportunity to put language in HB 2 if need be or there could be blast motions. He did not think they had the ability to know whether or not these bills could be funded right now. **SEN. LAIBLE** said, other than a blast motion, this is the bone pile. **CHAIRMAN COONEY** said other than a blast motion or language being put in HB 2 in the Free Conference Committee.

ADJOURNMENT

Adjournment: 12:12 A.M.

SEN. MIKE COONEY, Chairman

PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

EXHIBIT ([fcs81aad0.TIF](#))